

Federal Housing Finance Board

§ 908.9

(i) *Prohibition of reimbursement or indemnification.* A Bank shall not reimburse, indemnify, or otherwise compensate directly or indirectly any executive officer or director for any penalty imposed against such individual under paragraph (c)(3) of this section.

(j) *Applicability.* Any penalty under this part may be imposed only for conduct or violations occurring after November 12, 1999.

(k) *Adjustment of civil money penalties by the rate of inflation.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, Pub. Law No. 104-134 (1996) (collectively, the Inflation Adjustment Act) (to be codified at 28 U.S.C. 2461 note), the Finance Board is required to adjust each civil money penalty set forth herein by a prescribed cost-of-living adjustment at least once every four years. The adjustment is based on the formula prescribed in section 5(b) of the Inflation Adjustment Act (28 U.S.C. 2461 note).

§ 908.7 Service of notice.

In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379A of the Safety and Soundness Act (12 U.S.C. 4640), any service required or authorized to be made by the Finance Board under this part may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Finance Board may by regulation or otherwise provide.

§ 908.8 Subpoenas.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1379B of the Safety and Soundness Act (12 U.S.C. 4641), the Finance Board, in the course of or in connection with a hearing under this part, shall have the authority:

- (1) To administer oaths and affirmations;
- (2) To take and preserve testimony under oath;
- (3) To issue subpoenas and subpoenas *duces tecum*; and
- (4) To revoke, quash, or modify subpoenas and subpoenas *duces tecum* issued by the Finance Board pursuant to this part.

(b) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) *Enforcement.* The Finance Board may file an action in the United States district court for the judicial district where the proceeding is being conducted or where the witness resides or conducts business, or in the United States District Court for the District of Columbia, for enforcement of any subpoena or subpoena *duces tecum* issued pursuant to this section. Such courts shall have jurisdiction over such actions and power to order and require compliance with such subpoenas and subpoenas *duces tecum*.

(d) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by a Bank may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses shall be paid by the Bank or from its assets.

§ 908.9 Hearings on the record.

(a) *Requirements—(1) Venue and record.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1373 of the Safety and Soundness Act (12 U.S.C. 4633), any hearing conducted pursuant to §§ 908.4 or 908.6 shall be held on the record and in the District of Columbia.

(2) *Timing.* Any hearing shall be set for a date not earlier than thirty (30) days nor later than sixty (60) days after service of a notice, unless an earlier or a later date is set by the presiding officer at the request of the party served.

(3) *Procedure.* Any hearing held pursuant to §§ 908.4 or 908.6 shall be conducted in accordance with chapter 5 of Title 5 of the United States Code.

(4) *Failure to appear.* If a respondent fails to appear at a hearing individually or through a duly authorized representative, the respondent shall be deemed to have consented to the issuance of a cease and desist order or

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an order assessing a civil money penalty for which the hearing is held.

(5) *Open to the public.* All hearings on the record with respect to any notice issued by the Finance Board shall be open to the public, unless the Board of Directors, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(b) *Issuance of final order.* After a hearing on the record has been concluded, and within 90 days after the parties have been notified that the case has been submitted to the Board of Directors for final decision, the Board of Directors shall render the final decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding a final order or orders consistent with the provisions.

(c) *Judicial review and modification of final orders.* Judicial review of any such final decision and order shall be exclusively as provided for in § 908.10, pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and sections 1373 and 1374 of the Safety and Soundness Act (12 U.S.C. 4633 and 4634). Unless a petition for review is timely filed as provided in § 908.10, and thereafter until the record in the proceeding has been filed as so provided, the Board of Directors may at any time modify, terminate, or set aside any such final decision and order, upon such notice and in such manner as the Board of Directors, in its sole discretion, considers proper. Upon such filing of the record, the Board of Directors may modify, terminate, or set aside any such final decision and order with permission of the court.

§ 908.10 Judicial review.

(a) *Authority.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374 of the Safety and Soundness Act (12 U.S.C. 4634), any party to a hearing may obtain judicial review of a final decision and order issued under §§ 908.4 or 908.6 exclusively by filing a written petition in the United States Court of Appeals for the District of Columbia Circuit within thirty (30) days after the date of service of the final decision and order, requesting the court to modify, termi-

nate or set aside the final decision and order.

(b) *Filing of record.* Upon receiving a copy of the petition from the clerk of the court of appeals, the Finance Board shall file the hearing record with the clerk, as provided in section 2112 of Title 28 of the United States Code (28 U.S.C. 2112).

(c) *Jurisdiction.* Pursuant to section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(c) of the Safety and Soundness Act (12 U.S.C. 4634(c)), upon the filing of a petition, the court of appeals shall have jurisdiction, which upon the filing of the record by the Finance Board (except as otherwise provided in § 908.9) shall be exclusive, to affirm, modify, terminate or set aside, in whole or in part, a final decision and order of the Board of Directors.

(d) *Review.* Review by the court of appeals of a final decision and order of the Board of Directors and the record of any hearing conducted pursuant to this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(e) *Order to pay civil money penalty.* In connection with its review of a final order pursuant to this part, the court of appeals shall have authority in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(e) of the Safety and Soundness Act (12 U.S.C. 4634(e)), to order payment of any civil money penalty imposed by the Finance Board.

(f) *No automatic stay.* In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(f) of the Safety and Soundness Act (12 U.S.C. 4634(f)), the commencement of an action for judicial review of a final decision and order of the Board of Directors under this section shall not operate as a stay of any such order, unless the court of appeals specifically orders a stay of the order in whole or in part.

§ 908.11 Jurisdiction and enforcement.

(a) *Enforcement.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(a) of the Safety and Soundness Act (12 U.S.C. 4635(a)), the Finance Board may bring an action in the United States District Court for the